

Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, June 30, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Larry L. Burton for SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*



PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF TEXTILE PILLOW COVERS WITH ZIPPER CLOSURES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of two tariff classification ruling letters and revocation of any treatment relating to the classification of certain textile pillow covers with zipper closures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of textile pillow covers with zipper closures. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise

DATE: Comments must be received on or before August 13, 2004.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of textile pillow covers with zipper closures. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 965342, dated July 17, 2002 (Attachment A), and New York Ruling Letter (NY) J86955 dated August 21, 2003 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing

databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 965342, CBP ruled that the knit textile pillow cover with a zipper closure was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other: Other." Since the issuance of HQ 965342, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. CBP has consistently ruled that finished pillow or cushion covers with zipper closures are classifiable in heading 6304, HTSUSA. In Headquarters Ruling Letter (HQ) 964490, dated October 19, 2000, a knit polyester fleece cover for a neck pillow, having a zipper closure on one side and designed to be filled with loose polyester fiber after importation into the United States, was classified under subheading 6304.91.0040, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." We have now determined that the knit polyester pillow cover with zipper closure that was described in HQ 965342 is likewise classified in subheading 6304.91.0040, HTSUSA.

In NY J86955, CBP ruled that the woven cotton pillow cover was classified in subheading 6302.31.9040, HTSUSA, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of cotton: Other: Not napped, Pillowcovers." The woven pillow cover comprised of chief weight polyester was classified in subheading 6302.32.2060, HTSUSA, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other: Other: Other." Since the issuance of NY J86955, CBP has reviewed the classification of these items and has determined that the cited ruling is in error for the same reasons as set forth in the preceding paragraph. Thus, we have determined that the woven

pillow covers are properly classified as follows: The pillow cover consisting of 100 percent cotton woven fabric is classified in subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The pillow cover consisting of 55 percent polyester and 45 percent cotton woven fabric is classified in subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 965342 and NY J86955 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967166 (Attachment C) and HQ 966808 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 23, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 965342

July 17, 2002

CLA-2 RR:CR:TE 965342 ttd

CATEGORY: Classification

TARIFF NO: 6307.90.9889

MS. TAMMIE MARTIN
DIVERSIFIED FREIGHT LOGISTICS, INC.
P.O. Box 610629
DFW Airport, TX 75261

RE: Classification of a travel pillow cover

DEAR MS. MARTIN:

This is in response to your letter, dated September 17, 2001, on behalf of your client, Wolf Manufacturing, regarding the classification of a certain travel pillow cover under the Harmonized Tariff Schedule of the United

States Annotated (HTSUSA). Your letter, which was originally submitted to the Customs National Commodity Specialist Division in New York, was referred to this office for reply. A sample was submitted for review.

FACTS:

The article under consideration is an unfilled “u-shaped” pillow cover. The item is made of 100 percent polyester knit fleece fabric and measures approximately 11.5 inches by 16 inches. The cover has a 7-inch long zippered opening. After importation the cover will be stuffed with polyester fiber fill and the zipper will be closed.

ISSUE:

What is the proper classification of the subject merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes. . . .” In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA. Heading 9404, HTSUSA, covers “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered.” The EN to heading 9404, HTSUSA, provide that the heading covers, inter alia, bedding and similar furnishing which are sprung or stuffed or internally fitted with any material, including synthetic fibres. As the subject pillow shell is not “stuffed” or filled at the time of importation, it is precluded from classification in heading 9404, HTSUSA, and is therefore potentially classifiable in heading 6304, HTSUSA, as an other furnishing article.

In Headquarters Ruling Letter (**HQ**) **953003**, dated February 24, 1993, Customs classified a cushion cover with a zipper closure in heading 6304, HTSUSA, and a cushion cover without a zipper closure in heading 6307, HTSUSA. In that ruling, we found that articles “designed for or fitted with a zipper closure” were more “typical of a finished cushion cover,” while those without a zipper closure were more like a pillow shell. See also **HQ 953004**, dated February 24, 1993. Moreover, in **HQ 960870**, dated April 22, 1998, Customs determined that a terry fabric pillow cover for a buckwheat hull filled neck pillow to be classified in heading 6304, HTSUSA, as an other furnishing article. The terry fabric pillow cover considered in that ruling had a 12-inch opening without a zipper into which a “u-shaped” stuffed pillow shell

with a 6-inch zippered opening was fitted. Thus, in that ruling, the pillow cover functioned more as a typical cover encompassing a stuffed pillow shell.

In this case, the subject item, unlike the pillow cover in **HQ 960870**, functions as the outer skin of a travel pillow and should be regarded as more like a shell than a cover. The pillow cover in **HQ 960870** is distinguishable from the subject merchandise in that it had a 12-inch opening, large enough to accommodate a stuffed pillow shell. Based on visual examination, the 7-inch opening of the subject article appears to be too small to insert a “u-shaped” polyester filled pillow form. Rather, the opening is merely large enough to insert the loose polyester fiber fill. Therefore, the subject item primarily functions as a pillow shell and not a pillow cover like the merchandise considered in **HQ 960870**. Therefore, the subject article is not properly classified in heading 6304, HTSUSA, as an other furnishing article.

Heading 6307, HTSUSA, covers other made up articles of textile materials. The EN to heading 6307, HTSUSA, indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. In **HQ 087650**, dated October 23, 1990, Customs determined that a polyester cover for an inflatable plastic “u-shaped” travel pillow, when imported separately, would be properly classifiable in heading 6307, HTSUSA, as an other made up article of textile materials. Likewise, in **NY D86100**, dated January 7, 1999, Customs determined that a “u-shaped” travel pillow shell, made of polyester and cotton woven fabric with an opening of 5 inches and stuffed with fiber filling after importation, was classified in subheading 6307.90.9989. See also **NY C84939**, dated March 11, 1998.

In this case, the subject travel pillow shell is stuffed directly with polyester fiber fill without a pillow shell, functioning as the outer skin of the travel pillow. Thus, like the travel pillow shell in **NY D86100**, when the subject article is stuffed with fiber filling after importation, it is classified in heading 6307, HTSUSA. As the subject pillow cover is not included more specifically in other headings of Section XI nor elsewhere in the Nomenclature, it is classified in subheading 6307.90.9989, HTSUSA.

Finally, we note that according to the manufacturer’s advertising material, the manufacturer also sells a “Blow-UP” travel pillow, which utilizes the same cover or a very similar cover to accommodate an inflatable bladder. <<http://www.travelpillow.com/products/pillows/neck/main.html>> Nonetheless, like the item in **HQ 087650**, when the subject item is used to cover an inflatable plastic “u-shaped” travel pillow, it is also properly classified under subheading 6307.90.9889, HTSUSA.

HOLDING:

The subject merchandise is classified in subheading 6307.90.9889, HTSUSA, which provides for “Other made up articles, including dress patterns: Other: Other: Other, Other: Other.” The general column one duty rate is 7 percent as valorem.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY J86955
August 21, 2003
CLA-2-63:RR:NC:TA:349 J86955
CATEGORY: Classification
TARIFF NO.: 6302.31.9040; 6302.32.2060

MS. HOLLY M. COOK
LOUISVILLE BEDDING COMPANY
10400 Bunsen Way
Louisville, KY 40299

RE: The tariff classification of a pillow protector from China.

DEAR MS. COOK:

In your letter dated July 29, 2003 you requested a classification ruling. The submitted sample is a pillow protector/pillowcover. It will be made from either 100 percent cotton woven fabric or 55 percent polyester and 45 percent cotton woven fabric. The fabric will be formed with either a plain weave or a white on white stripe sateen weave. Three edges of the protector are sewn and the fourth edge has a zipper closure. The item measures approximately 20 x 25 inches and is designed to fit a standard size bed pillow. After importation you will insert a latex foam bun and zip the cover closed. Although you refer to this finished cover as a shell, in use it is more similar to the pillow covers provided for in the bed linen heading.

The applicable subheading for the cotton pillow protector will be 6302.31.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: other: not napped . . . pillowcovers. The duty rate will be 4.2 percent ad valorem.

The applicable subheading for the pillow protector (in chief weight polyester) will be 6302.32.2060, HTS, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of man-made fibers: other . . . other: other. The duty rate will be 11.6 percent ad valorem.

The cotton cover falls within textile category designation 369. The cover in chief weight polyester falls within textile category designation 666. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 646-733-3043.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967166
CLA-2 RR:CR:TE 967166 ASM
CATEGORY: Classification
TARIFF NO.: 6304.91.0040

MS. TAMMIE MARTIN
DIVERSIFIED FREIGHT LOGISTICS, INC.
P.O. Box 610629
DFW Airport, TX 75261

RE: Revocation of HQ 965342, regarding classification of a knit textile pillow cover with zipper closure

DEAR MS. MARTIN:

This is in regard to the Customs and Border Protection (CBP) Headquarters Ruling Letter (HQ) 965342, issued to you on July 17, 2002, on behalf of your client, Wolf Manufacturing. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes HQ 965342 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for a knit textile pillow cover with a zipper closure.

FACTS:

In HQ 965342, the subject article was described as an unfilled "u-shaped" pillow cover, made of 100 percent polyester knit fleece fabric and measuring approximately 11.5 inches wide by 16 inches long. The pillow cover featured a 7-inch long zippered opening. After importation into the United States, the cover was to be stuffed with polyester fiber fill and the zipper closed. The merchandise was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other: Other: Other."

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Ex-

planatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

CBP has consistently ruled that finished pillow or cushion covers with zipper closures are classifiable in heading 6304, HTSUSA. In Headquarters Ruling Letter (HQ) 964490, dated October 19, 2000, a knit polyester fleece cover for a neck pillow, having a zipper closure on one side and designed to be filled with loose polyester fiber after importation into the United States, was classified under subheading 6304.91.0040, HTSUSA, which provides for “Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers.” In HQ 088340, dated January 4, 1990, CBP classified two different styles of “pillow covers” in heading 6304, HTSUSA: Style 1664 was constructed with a zippered opening; Style 8802 did not have a finished zipper closure but the back consisted of two overlapping panels forming a pocket to insert a pillow. *See also* HQ 956121, dated June 22, 1994, which classified a “pillow cover” with zipper closure under heading 6304, HTSUSA; and HQ 963484, which separately classified two finished cushion covers with zipper closures in heading 6304, HTSUSA.

In view of the foregoing, we have determined that HQ 965342, incorrectly classified the subject merchandise. The knit pillow cover is properly classified in heading 6304, HTSUSA.

HOLDING:

HQ 965342, dated July 17, 2002, is hereby revoked.

The subject knit pillow cover of 100 percent polyester is classified in subheading 6304.91.0040, HTSUSA, which provides for “Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers.” The general column one duty rate is 5.8 percent *ad valorem*. The textile category is 666.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966808
CLA-2 RR:CR:TE 966808 ASM
CATEGORY: Classification
TARIFF NO.: 6304.92.0000; 6304.93.0000

MS. HOLLY M. COOK
LOUISVILLE BEDDING COMPANY
10400 Bunsen Way
Louisville, KY 40299

RE: Revocation of NY J86955, regarding classification of woven textile pillow covers with zipper closures

DEAR MS. COOK:

This is in regard to the Customs and Border Protection (CBP) New York Ruling Letter (NY) J86955, issued to you on August 21, 2003. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY J86955 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for certain woven textile pillow covers.

FACTS:

In NY J86955, the subject article was described as a "pillow protector/pillowcover" (hereinafter "pillow cover") made from either 100 percent cotton woven fabric or 55 percent polyester and 45 percent cotton woven fabric. The fabric featured either a plain weave or a white on white stripe sateen weave. Three edges of the fabric were sewn closed and the fourth edge designed with a zipper closure. After importation, the cover was to be stuffed with a latex foam "bun" and the zipper closed. The cotton pillow cover was classified in subheading 6302.31.9040, HTSUSA, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of Cotton: Other: Not napped, Pillowcovers." The pillow cover comprised of chief weight polyester was classified in subheading 6302.32.2060, HTSUSA, which provides for "Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other: Other: Other."

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

CBP has consistently ruled that finished pillow or cushion covers with zipper closures are classifiable in heading 6304, HTSUSA. In Headquarters Ruling Letter (HQ) 964490, dated October 19, 2000, a knit polyester fleece cover for a neck pillow, having a zipper closure on one side and designed to be filled with loose polyester fiber after importation into the United States, was classified under subheading 6304.91.0040, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." In HQ 088340, dated January 4, 1990, CBP classified two different styles of "pillow covers" in heading 6304, HTSUSA: Style 1664 was constructed with a zippered opening; Style 8802 did not have a finished zipper closure but the back consisted of two overlapping panels forming a pocket to insert a pillow. See also HQ 956121, dated June 22, 1994, which classified a "pillow cover" with zipper closure under heading 6304, HTSUSA; and HQ 963484, which separately classified two finished cushion covers with zipper closures in heading 6304, HTSUSA.

In view of the foregoing, it is our determination that the subject articles were incorrectly classified in NY J86955. The correct classification for these woven textile pillow covers with zipper closures is in heading 6304, HTSUSA.

HOLDING:

NY J86955, dated August 21, 2003, is hereby revoked.

The merchandise is correctly classified as follows: The pillow cover consisting of 100 percent cotton woven fabric is classified in subheading 6304.92.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of cotton." The general column one duty rate is 6.3 percent *ad valorem*. The textile category is 369. The pillow cover consisting of 55 percent polyester and 45 percent cotton woven fabric is classified in subheading 6304.93.0000, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of synthetic fibers." The general column one duty rate is 9.3 percent *ad valorem*. The textile category is 666.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director;
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF UNASSEMBLED WOOD BURNING FIREPLACES AND COOKSTOVES COMPRISED OF SOAPSTONE

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of withdrawal of proposed revocation of two ruling letters and treatment relating to the tariff classification of unassembled wood burning fireplaces and cookstoves comprised of soapstone under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is withdrawing its proposal to revoke two rulings concerning the tariff classification of unassembled wood burning fireplaces and cookstoves comprised of soapstone and to revoke any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocations was published on April 14, 2004, in Vol. 38, No. 16 of the *Customs Bulletin*. One comment was received in response to the notice.

EFFECTIVE DATE: This notice of withdrawal is effective July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice proposing to revoke Headquarters Ruling Letters (“HQ”) 960163 and 959493, both dated April 21, 1997, as they pertain to the classification of merchandise alternately described as unassembled wood burning fireplaces or cookstoves comprised of soapstone, was published on April 14, 2004, in Vol. 38, No. 16 of the *Customs Bulletin*. In both rulings, merchandise alternately described as wood burning stoves or fireplaces comprised of soapstone was classified under subheading 6802.99.0060, HTSUSA, which provides for other worked monumental building stone. CBP proposed to reclassify the unassembled soapstone ar-

ticles under heading 7116, HTSUSA. One comment was received in response to this notice.

Based upon the comment received and further review of the matter, CBP now believes that the merchandise should remain classified as it was under HQ 960163 and 959493. Accordingly, this notice advises interested parties that Customs is withdrawing the proposed revocation of HQ 960163 and 959493.

Dated: June 21, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICA- TION OF CERTAIN CHEF'S COATS

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain chef's coats.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) is revoking one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain chef's coats. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the Customs Bulletin of May 12, 2004, Vol. 38, No. 20. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 12, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch: (202) 572-8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as

amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) A87771, dated September 30, 1996, was published on May 12, 2004, in Vol. 38, No. 20, of the Customs Bulletin.

As stated in the notice of proposed revocation, this revocation covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUSA. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY A87771, CBP classified a chef’s coat under subheading 6211.42.0081, HTSUSA, which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of cotton: Other.” Based on our review of heading 6211, HTSUSA,

heading 6206, HTSUSA, the Legal Notes, and the Explanatory Notes, we find that a chef's coat of the type subject to this notice, should be classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's".

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY A87771 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967104 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the Customs Bulletin.

DATED: June 21, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967104
June 21, 2004
CLA-2: RR:CR:TE: 967104 BtB
CATEGORY: Classification
TARIFF NO.: 6206.30.30

MR. MAURITZ PLENBY
ASSOCIATED MERCHANDISING CORPORATION (AMC)
1440 Broadway
New York, NY 10018

RE: The tariff classification of a unisex's chef coat from Indonesia

DEAR MR. PLENBY:

This is in reference to New York Ruling Letter (NY) A87771, dated September 30, 1996, issued to you by the Bureau of Customs and Border Protection (f/k/a U.S. Customs Service) regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a chef's jacket from Indonesia ("chef's coat"). We have reconsidered NY A87771 and have determined that the classification of the chef's coat is not correct. This ruling sets forth the correct classification and revokes NY A87771.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY A87771, as described below, was published in the *Customs Bulletin*, Volume 38,

Number 20, on May 12, 2004. CBP received no comments during the notice and comment period that closed on June 11, 2004.

FACTS:

The chef's coat is made of 100% woven cotton fabric. The garment features a full-front opening with a double row of fabric knot buttons that can button either left over right or right over left. It is hip-length with a mandarin collar and mandarin styling, long sleeves with a turned-up split cuff. The chef's coat is unisex.

In NY A87771, CBP classified the chef's coat under subheading 6211.42.0081, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other."

ISSUE:

Whether the chef's coat is properly classified in heading 6211, HTSUSA, which provides for, *inter alia*, other garments not more specifically provided for elsewhere, or in heading 6206, HTSUSA, which provides for women's blouses.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The EN to heading 6211 state that the EN to heading 6114 concerning other garments apply *mutatis mutandis*, to the articles of heading 6211, HTSUSA. The applicable EN to heading 6114, HTSUSA, provides that "this heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter". Applying this language to heading 6211, HTSUSA, denotes that Heading 6211, HTSUSA, is not appropriate if the garments at issue are covered more specifically in preceding headings.

The applicable EN to heading 6114, HTSUSA, further states the following:

The heading includes, *inter alia*:

- (1) Aprons, boiler suits (coverall), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.
- (2) Clerical or ecclesiastical garments and vestments (e.g., monks' habits, cassocks, copes, soutanes, surplices).
- (3) Professional or scholastic gowns and robes.

- (4) Specialized clothing for airmen, etc. (e.g., airmen's electrically heated clothing).
- (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards).

The General Notes to the EN to Chapter 62 state, in part, "Shirts and shirt blouses are garments designed to cover the upper part of the body, having long or short sleeves and a full front opening starting at the neckline."

The application of heading 6211 to other garments has been previously reviewed by CBP. In Headquarters Ruling Letter (HQ) 959136, dated November 27, 1996, this office classified a hospital issue scrub type top in heading 6206, HTSUSA, determining that it was not suitable for use as protective clothing and, hence, not classifiable under heading 6211. In this ruling, CBP pointed out that "the protective garments properly classifiable under heading 6211, HTSUSA, are of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes."

In contrast, in HQ 952934, dated July 19, 1993, CBP classified coveralls designed to protect the wearer from microwave radiation as protective clothing under Heading 6211, HTSUSA. The coveralls at issue in that case were composed of textile fabric and stainless steel fibers. Also, in HQ 084132, dated July 6, 1989, CBP classified a lab coat made of 100 percent polyester woven fabric with carbon fiber woven into it as an antistatic component under Heading 6211, HTSUSA. The lab coat was designed for wear in the electronics industry.

The instant chef's coat is not intended to be worn over other forms of clothing to provide protection to one's clothing. Rather, the garment is designed to be worn over underwear and as the main article of clothing over the torso. It provides the wearer with the coverage of most upper body garments, but has no protective design features or properties as we construe those terms. Therefore, the chef's jacket is more specifically provided for at GRI 1 in headings earlier in the chapter.

Chapter 62, note 8, HTSUSA, states:

Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments.

The instant chef's coat features a double row of fabric knot buttons that can button either left over right or right over left. The cut of the coat does not clearly indicate that it is designed for one or other of the sexes. As closure can be both ways and cut does not clearly indicate the sex designation, the garment is not identifiable as either a men's or boy's garment or women's or girls' garment. Therefore, the coat is to be classified in the appropriate head-

ing covering women's or girls' garments. The chef's coat is not described as having features which would distinguish it as a jacket rather than a shirt worn outside the waistband, in terms of its features, detailing or notions, within the tariff meaning of the term jacket. Therefore, the upper body garment is more properly classified in heading 6206, as a blouse or shirt.

HOLDING:

NY A87771, dated September 30, 1996, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

The subject chef's jacket is classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's". The applicable rate of duty under the 2004 HTSUSA is 15.4% percent *ad valorem* and the textile category is 341.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial Rulings Division.

**REVOCATION AND MODIFICATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF UPPER BODY GARMENTS
SIMILAR TO SLEEVELESS TANK STYLES**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of revocation and modification of tariff classification ruling letters and revocation of treatment relating to the classification of certain upper body garments similar to sleeveless tank styles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling

letter and modifying two ruling letters relating to the tariff classification of upper body garments similar to sleeveless tank styles under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on April 14, 2004, in Volume 38, Number 16, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 12, 2004.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter and modify two ruling letters, each pertaining to the tariff classification of upper body garments similar to sleeveless tank styles was published in the April 14, 2004, CUSTOMS BULLETIN, Volume 38, Number 16. No comments were received.

As stated in the notice of proposed actions, the revocation and modifications will cover any rulings on this merchandise that may

exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In Headquarters Ruling Letter (HQ) 964221, dated July 10, 2002, CBP ruled that an upper body garment similar to a sleeveless tank style measuring 2 ¼ inches at the shoulder seams was classified in subheading 6206.30.3010, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, With two or more colors in the warp and/or the filling: Women's." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in subheading 6211.42.0054, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: With two or more colors in the warp and/or filling."

In New York Ruling Letter (NY) B89011, dated September 26, 1997, an upper body garment similar to a sleeveless tank style, identified as item number 4254, measuring 2 ½ inches in width at the shoulders was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." CBP has reviewed NY B89011, and with respect to this garment, has determined that the ruling is in error. Item number 4254 is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other."

In Port Decision Letter (PD) A88686, dated November 18, 1996, CBP classified an upper body garment similar to a sleeveless tank style, identified as style number 71075506/71075506P, measuring 2 ½ inches at the shoulder seams was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." CBP has reviewed NY B89011, and with respect to this garment, has determined that the ruling is in error. Style number 71075506/71075506P is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 964221, modifying NY B89011 and PD A88686, and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of certain sleeveless upper body garments according to the analysis contained in HQ 966056, HQ 967033 and HQ 967034, set forth as Attachments A, B and C, respectively, to this document. In each ruling acted upon, we find insufficient shoulder coverage for the garment to be classified as a blouse. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: June 21, 2004

Greg Deutsch for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966056
June 21, 2004
CLA-2 RR:CR:TE 966056 KSH
TARIFF NO.: 6211.42.0054

WAL-MART STORES, INC.
P.O. Box 116
Bentonville, AR 72712

RE: Revocation of Headquarters Ruling Letter (HQ) 964221, dated July 10, 2002; Classification of sleeveless upper body garments; Heading 6211

DEAR SIR OR MADAM:

This is in reference to Headquarters Ruling Letter (HQ) 964221 issued to the Port Director, Los Angeles/ Long Beach, CA, on July 10, 2002, with regard to protest 2704-99-150052, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of an upper body garment similar to a sleeveless tank style. The article was classified in subheading 6206.30.3010, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, With two or more colors in the warp and/or the filling: Women's." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

HQ 964221 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 964221 when notice of denial of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 2704-99-150052, but will be applicable to any unliquidated entries or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN. Notice of the proposed revocation of HQ 964221 was published on April 14, 2004, in Vol. 38 No. 16 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

The garment at issue is a 100% cotton yarn dyed seersucker blouse, identified as Style FG 15-111. The garment is a woven, sleeveless, scoop neck shirt, part of the "Faded Glory" collection. The silhouette of the garment is shaped throughout the torso with front and back vertical darts. The garment has a full front opening with buttons running up the front. The bottom hem of the garment is slightly curved with side vents measuring approximately 1.75 inches. The armholes and the neckline have a 1" turned facing. The garment measures two and one-quarter inches at the tops of the shoulders. There is a single needle edge stitch along the front opening, and a one-inch single needle top stitch along the neckline, armhole and bottom hem. The sample submitted is a royal blue, yellow, white and teal plaid. The garment is sold in small, medium, large and extra large sizes.

ISSUE:

Whether the subject garment is classifiable as a women's blouse of heading 6206, HTSUSA, or as an other garment of heading 6211, HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6206, HTSUSA, provides for, among other things, women's blouses. The Explanatory Notes to heading 6206 provides, in relevant part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

The General Explanatory Notes to Chapter 62, HTSUSA, describes shirts and shirt-blouses as:

[G]arments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. Blouses are also designed to cover the upper part of the body but may be sleeveless and without an opening at the neckline.

The CBP Informed Compliance Publication (ICP) "What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS", (Jan., 2004) offers guidance in determining the commercial designation of articles. In regard to women's blouses, it states, in relevant part:

[Blouses] are garments designed to cover the upper part of the body and extend from the neck area to or below the waist. The amount of coverage afforded the wearer includes shoulder, armhole and neckline. These garments may have long sleeves, short sleeves or no sleeves. They may have a full or partial opening starting at the neckline, and a collar treat-

ment of any type, including a hood, or no collar. They may have either no closure as in a pullover or a closure positioned on the front, back, or side . . .

* * *

Thus, in general, the amount of coverage afforded the wearer by the garment commonly recognized as a “blouse” of heading 6206, HTSUSA, includes shoulder coverage, armhole and neck coverage, as well as coverage to the vicinity of the waist. As the submitted garment has limited shoulder coverage, it is precluded from classification in heading 6206, HTSUSA.

Heading 6211, HTSUSA, provides for track suits, ski-suits and swimwear, and other garments. Subheading 6211.42.0056, HTSUSA, provides for blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206, HTSUSA. Garments at this subheading level consist of the following:

1. blouses, shirts and shirt-blouses with pockets below the waist, tightening or rib knit waistband;
2. sleeveless tank-styled garments — featuring a defined neckline (“U”, “V”, or scooped) — reaching the vicinity of the waist — providing the wearer with some (though limited) shoulder coverage;
3. similar upper body garments — garments known as “camisoles” sharing a similar silhouette as heading 6206, HTSUSA, blouses — having a defined neckline.

The submitted garment features a defined, scooped neckline, with limited shoulder coverage, and a body which reaches the vicinity of the waist. Accordingly, the subject garment is properly classified in subheading 6211.42.0054, HTSUSA.

HOLDING:

HQ 964221, dated July 10, 2002, is hereby revoked.

The subject garment, referenced style number FG 15-111, is classified in subheading 6211.42.0054, HTSUSA, which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of cotton: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: With two or more colors in the warp and/or filling.” The applicable rate of duty is 8.1 percent ad valorem and the quota category is 341.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Greg Deutsch for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967033
June 21, 2004
CLA-2 RR:CR:TE 967033 KSH
TARIFF NO.: 6211.42.0056

MR. PHILLIP KWOK, CHB
BALTRANS USA, INC.
700 Rockaway Turnpike
Lawrence, NY 11559

RE: Modification of Port Decision Letter (PD) A88686, dated November 18, 1996; Classification of sleeveless upper body garments; Heading 6211

DEAR MR. KWOK:

Port Decision Letter (PD) A88686 was issued to you on behalf of your client, Kazu Apparel Group, Inc., on November 18, 1996, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of an upper body garment similar to a sleeveless tank style among other women's sleeveless upper body garments not at issue. The article, identified as style number 71075506/71075506P, was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Women's." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. Therefore, this ruling modifies PD A88686 with regard to style number 71075506/71075506P.

Pursuant to section 625(c), Tariff Act of 1930 919 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed modification of PD A88686 was published on April 14, 2004, in Vol. 38 No. 16 of the CUSTOMS BULLETIN.

FACTS:

The garment at issue is a 100% cotton woven upper body garment, identified as style number 71075506/71075506P. The garment measures two and one-half inches at the tops of the shoulders, features a full rear opening secured by six plastic buttons and a single metal snap fastener at the top, faced armholes, a round neckline, two and one-half inch side vents on each side and a straight hemmed bottom.

ISSUE:

Whether the subject garment is classifiable as a women's blouse of heading 6206, HTSUSA, or as an other garment of heading 6211, HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6206, HTSUSA, provides for, among other things, women's blouses. The Explanatory Notes to heading 6206 provides, in relevant part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

The General Explanatory Notes to Chapter 62, HTSUSA, describes shirts and shirt-blouses as:

[G]arments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. Blouses are also designed to cover the upper part of the body but may be sleeveless and without an opening at the neckline.

The CBP Informed Compliance Publication (ICP) "What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS", (Jan., 2004) offers guidance in determining the commercial designation of articles. In regard to women's blouses, it states, in relevant part:

[Blouses] are garments designed to cover the upper part of the body and extend from the neck area to or below the waist. The amount of coverage afforded the wearer includes shoulder, armhole and neckline. These garments may have long sleeves, short sleeves or no sleeves. They may have a full or partial opening starting at the neckline, and a collar treatment of any type, including a hood, or no collar. They may have either no closure as in a pullover or a closure positioned on the front, back, or side. . . .

* * *

Thus, in general, the amount of coverage afforded the wearer by the garment commonly recognized as a "blouse" of heading 6206, HTSUSA, includes shoulder coverage, armhole and neck coverage, as well as coverage to the vicinity of the waist. As the submitted garment has limited shoulder coverage, it is precluded from classification in heading 6206, HTSUSA.

Heading 6211, HTSUSA, provides for track suits, ski-suits and swimwear, and other garments. Subheading 6211.42.0056, HTSUSA, provides for those garments which are excluded from classification as blouses of heading 6206, HTSUSA. Garments at this subheading level consist of the following:

1. blouses, shirts and shirt-blouses with pockets below the waist, tightening or rib knit waistband;

2. sleeveless tank-styled garments — featuring a defined neckline (“U”, “V”, or scooped) — reaching the vicinity of the waist — providing the wearer with some (though limited) shoulder coverage;
3. similar upper body garments — garments known as “camisoles” sharing a similar silhouette as heading 6206, HTSUSA, blouses — having a defined neckline.

The submitted garment features a defined, scooped neckline, with limited shoulder coverage, and a body which reaches the vicinity of the waist. Accordingly, the subject garment is properly classified in subheading 6211.42.0056, HTSUSA.

HOLDING:

PD A88686, dated November 18, 1996, is hereby modified.

The subject garment, referenced style number 71075506/71075506P, is classified in subheading 6211.42.0056, HTSUSA, which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls’: Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments excluded from heading 6206: Other.” The applicable rate of duty is 8.1 percent ad valorem and the quota category is 341.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Greg Deutsch for MYLES B. HARMON,

Director;

Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967034
June 21, 2004
CLA-2 RR:CR:TE 967034 KSH
TARIFF NO.: 6211.42.0056

MR. THOMAS CALDECOT CHUBB, III
OXFORD INDUSTRIES, INC.
222 Piedmont Avenue, NE
Atlanta, GA 30308

RE: Modification of New York Ruling Letter (NY) B89011, dated September 26, 1997; Classification of sleeveless upper body garments; Heading 6211

DEAR MR. CHUBB:

New York Ruling Letter (NY) B89011 was issued to you on September 26, 1997, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of an upper body garment similar to a sleeveless tank style among other women's upper body garments not at issue. The article, style 4254, was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. Therefore, this ruling modifies NY B89011 with regard to the classification of style 4254.

Pursuant to section 625(c), Tariff Act of 1930 919 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed modification of NY B89011 was published on April 14, 2004, in Vol. 38 No. 16 of the CUSTOMS BULLETIN.

FACTS:

The garment at issue is a 100% cotton woven upper body garment, identified as style 4254. The sleeveless garment extends from the shoulders to the vicinity of the hips. It measures two and one-half inches in width at the shoulder seams and features a front and rear square neckline, a full front opening secured by ten buttons, seven tiny tucks on the front panels and has a ruffle trim around the neck opening and along the bottom.

ISSUE:

Whether the subject garment is classifiable as a women's blouse of heading 6206, HTSUSA, or as an other garment of heading 6211, HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN),

constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6206, HTSUSA, provides for, among other things, women's blouses. The Explanatory Notes to heading 6206 provides, in relevant part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

The General Explanatory Notes to Chapter 62, HTSUSA, describes shirts and shirt-blouses as:

[G]arments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. Blouses are also designed to cover the upper part of the body but may be sleeveless and without an opening at the neckline.

The CBP Informed Compliance Publication (ICP) "What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS", (Jan., 2004) offers guidance in determining the commercial designation of articles. In regard to women's blouses, it states, in relevant part:

[Blouses] are garments designed to cover the upper part of the body and extend from the neck area to or below the waist. The amount of coverage afforded the wearer includes shoulder, armhole and neckline. These garments may have long sleeves, short sleeves or no sleeves. They may have a full or partial opening starting at the neckline, and a collar treatment of any type, including a hood, or no collar. They may have either no closure as in a pullover or a closure positioned on the front, back, or side . . .

* * *

Thus, in general, the amount of coverage afforded the wearer by the garment commonly recognized as a "blouse" of heading 6206, HTSUSA, includes shoulder coverage, armhole and neck coverage, as well as coverage to the vicinity of the waist. As the submitted garment has limited shoulder coverage, it is precluded from classification in heading 6206, HTSUSA.

Heading 6211, HTSUSA, provides for track suits, ski-suits and swimwear, and other garments. Subheading 6211.42.0056, HTSUSA, provides for blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206, HTSUSA. Garments at this subheading level consist of the following:

1. blouses, shirts and shirt-blouses with pockets below the waist, tightening or rib knit waistband;
2. sleeveless tank-styled garments — featuring a defined neckline ("U", "V", or scooped) — reaching the vicinity of the waist — providing the wearer with some (though limited) shoulder coverage;
3. similar upper body garments — garments known as "camisoles" sharing a similar silhouette as heading 6206, HTSUSA, blouses — having a defined neckline.

The submitted garment features a defined, scooped neckline, with limited shoulder coverage, and a body which reaches the vicinity of the waist. Ac-

cordingly, the subject garment is properly classified in subheading 6211.42.0056, HTSUSA.

HOLDING:

NY B89011, dated September 26, 1997, is hereby modified.

The subject garment, referenced style 4254, is classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments excluded from heading 6206: Other." The applicable rate of duty is 8.1 percent ad valorem and the quota category is 341.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Greg Deutsch for MYLES B. HARMON,
Director;
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN NONWOVEN MAN-MADE MATERIAL

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of certain nonwoven man-made material.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter, Headquarters Ruling Letter (HQ) 964255, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain nonwoven man-made material. Similarly, CBP proposes to revoke

any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 13, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of certain nonwoven man-made material. Although in this notice CBP is specifically referring to the revocation of Headquarters decision (HQ) 964255, dated August 27, 2002, this notice covers any rulings on this merchandise which may

exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 964255, CBP classified a nonwoven man-made material under subheading 5911.40.0000, HTSUSA, which provides for, among other things, textile articles for technical uses. CBP has reviewed the classification of the material and has determined that the proper classification of the material, is under the provisions for nonwoven, other, under subheading 5603.92.0090, HTSUSA, or subheading 5603.93.0090, HTSUSA, depending on weight. HQ 964255 is set forth as "Attachment A" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 964255. CBP also intends to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967110 which is set forth as "Attachment B" to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 21, 2004

Greg Deutsch for MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
U.S. Customs Service
1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229
August 27, 2002
HQ 964255
CLA-2 RR:CR:TE 964255 mbg
CATEGORY: Classification
TARIFF NO.: 5911.40.0000

MR. JOSEPH C. SPARANO
U.S. CUSTOMS SERVICE
FIELD DIRECTOR, OFFICE OF REGULATORY AUDIT
1 Penn Plaza, 10th Floor
New York, NY 10119

RE: Internal Advice Request for classification of a Nonwoven Man-Made Material

DEAR MR. SPARANO:

This is in reply to your request for an Internal Advice on the classification of a nonwoven man-made material under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). The Internal Advice request was the result of a regulatory audit compliance assessment report (#220-8-IMO-004-Referral # 14568 June 12, 2000). Two written submissions were submitted to Customs by counsel on behalf of the importer. Samples were submitted with the request.

The Imported product is a nonwoven man-made material for use in blood filtration. The spunbound nonwoven material is imported as piece goods and is manufactured of a melt blow polyester which is considered to be a staple fiber. After Importation the subject merchandise undergoes a process, known in the industry as "grafting," during which the fabric is exposed to a solution with monomers and solvents and exposed to gamma radiation with subsequent washing and drying. The product's ultimate use is for leukocyte (white blood cell) reduction in blood filtration systems.

This letter is issued to your office because you have specifically requested the classification under the HTSUSA. However, due to issues regarding claims of business confidentiality of the manufacturing process, under the Trade Secrets Act (18 U.S.C. 1905) and the Freedom of Information Act (5 U.S.C. 552), which have yet to be resolved with counsel for the importer, this office is unable to provide a detailed interpretative ruling which will be subject to publication under 19 U.S.C 1625.

In light of the foregoing, we do not believe that it is within the best interest of the government under 19 C.F.R 177.7(a) to issue an Interpretative ruling with detailed analysis regarding classification at this time which would require the use of information that the importer's counsel alleges to be business confidential. However, for your regulatory audit purposes, we believe the following information will be beneficial and allow you to further the administrative process within your office.

The counsel for the importer has argued that classification is proper as a nonwoven fabric based on General Rule of Interpretation ("GRI") 2(a) which allows for the classification of an unfinished article in the same heading of

the finished article provided that the unfinished article has the essential character of the finished article. Customs disagrees with the classification proposed by counsel. Based upon the Legal Notes and principles of the HTSUSA as well as the construction and use of the subject merchandise, the classification is proper in subheading 5911.40.0000, HTSUSA, which provided for textile articles for technical uses. The general column one duty rate is 9 percent ad valorem for 2002.

As the entries which are subject to this regulatory audit compliance assessment report have liquidated, the importer's counsel should be advised by copy of this letter that if it timely protests and requests an Application for Further Review ("AFR") for the subject merchandise pursuant to 19 C.F.R. 174.24(d), 174.25 the AFR should be granted by the appropriate port of entry.

You are to mail this decision to the importer's counsel no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home page on the world Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

MYLES HARMON,
Acting Director;
Commercial Rulings Division.

Cc: NIS George Barth, National Commodity Specialist Division

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967110
CLA-2 RR:CR:TE 967110 SG
CATEGORY: Classification
TARIFF NO.: 5603.93.0090; 5603.92.0090

MS. MICHELE E. MCGUIRE
DELOITTE & TOUCHE LLP
2 World Financial Center, 9th floor
New York, NY 10281-1414

RE: Request for reconsideration of Headquarters Ruling Letter HQ 964255; Heading 5603; Heading 5911; Technical uses; Straining cloth; Medium for filtration; Essential character; Filmtec Corporation v. United States

DEAR MS. MCGUIRE:

This is in reply to your submission dated April 9, 2003, on behalf of your client Pall Corporation (Pall), requesting reconsideration of Headquarters Ruling Letter (HQ) 964255, dated August 27, 2002, concerning the classification of certain nonwoven man-made material. You provided a sample of the merchandise to aid us in our reconsideration.

In HQ 964255, issued to the Field Director, Office of Regulatory Audit, New York, on August 27, 2002, as a response to an Internal Advice request on behalf of Pall, we held that a nonwoven man-made material imported for

use in blood filtration was classifiable in subheading 5911.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), as a textile article for technical uses. We have reconsidered this classification and now believe that it is incorrect. In our reconsideration of this ruling, consideration was given to Filmtec Corporation v. United States, slip op, 03-153, (Ct. Int'l Trade, decided November 25, 2003).

FACTS:

A description of the merchandise set out in HQ 964255 reads:

The imported product is a nonwoven man-made material for use in blood filtration. The spunbound nonwoven material is imported as piece goods and is manufactured of a melt blow polyester which is considered to be a staple fiber.

After importation the subject merchandise undergoes a process, known in the industry as "grafting" during which the fabric is exposed to a solution with monomers and solvents and exposed to gamma radiation with subsequent washing and drying. The product's ultimate use is for leukocyte (white blood cell) reduction in blood filtration systems.

Samples of the material as imported prior to treatment (sample A) and after grafting (sample B) were submitted. Analysis of the samples by the Customs and Border Protection Laboratories and Scientific Services (CBP Lab) determined the following:

Sample 'A' weighs 72 grams per square meter and is composed of a layer of transparent looking nonwoven polyester and a layer of white fine polyester microfibers.

Sample 'B' weighs 55.1 grams per square meter and is composed of a layer of fine polyester microfibers.

* * *

these white layers in both Sample 'A' and Sample 'B' are further composed of very fine layers which can be easily separated . . . the orientation and arrangements of polyester fibers in all layers, in both sample are identical.

In a telephone conversation with a member of my staff, you advised that the filament polyester substrate is removed and discarded prior to use as a blood filter.

In your submission you maintain that the material at issue is substantially similar in all material respects to that classified in HQ 959276, dated January 30, 1998, under subheading 5603, HTSUS. You contend that in the condition as imported, the material is not a straining cloth as it would disintegrate if used as a filtration device under the pressure of most aqueous solutions. You also contend that the merchandise as imported is not an incomplete or unfinished article under GRI 2(a) because it does not have the essential character of a textile product for technical uses. It is your view that it is properly classifiable in heading 5603, HTSUS, as a nonwoven. You have also indicated that the imported fabric weighs 61.36 g/sm, with up to a 10 g/sm variance.

ISSUE:

Is the article under consideration classifiable under heading 5603, HTSUSA, as a nonwoven, or under heading 5911, HTSUSA, as a textile product for technical uses?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN”) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The two headings under consideration herein are heading 5603, HTSUSA, which provides for, nonwovens, whether or not impregnated, coated, covered or laminated; and heading 5911, HTSUSA, which provides for textile products and articles, for technical uses, specified in note 7 to Chapter 59.

HEADING 5603, HTSUSA

Legal Note 3 to chapter 56, HTSUSA, states:

Headings 5602 and 5603 cover respectively felt and nonwovens, impregnated, coated, covered or laminated with plastics or rubber whatever the nature of these materials (compact or cellular).

Heading 5603 also includes nonwovens in which plastics or rubber forms the bonding substance.

Headings 5602 and 5603 do not, however, cover:

- (a) Felt impregnated, coated, covered or laminated with plastics or rubber, containing 50 percent or less by weight of textile material or felt completely embedded in plastics or rubber (chapter 39 or 40);
- (b) Nonwovens, either completely embedded in plastics or rubber, or entirely coated or covered on both sides with such materials, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39 or 40); or
- (c) Plates, sheets or strip of cellular plastics or cellular rubber combined with felt or nonwovens, where the textile material is present merely for reinforcing purposes (chapter 39 or 40).

The EN to heading 5603, HTSUSA, state in pertinent part:

Except where they are covered more specifically by other headings in the Nomenclature, the heading covers nonwovens in the piece, cut to length or simply cut to rectangular (including square) shape from larger pieces without other working, whether or not presented folded or put up in packings (e.g., for retail sale). These include: facing webs (overlay) for

incorporation in laminated plastics; top-sheets for the manufacture of disposable baby napkins (diapers) or sanitary towels; fabrics for the manufacture of protective clothing or garment linings; sheets for filtering liquids or air, for use as stuffing materials, for sound insulation, for filtration or separation in road building or other civil engineering works; substrates for manufacturing bituminous roofing fabrics; primary or secondary backing for tufted carpets, etc.; handkerchiefs, bed linen, table linen, etc.

The EN to heading 5603, HTSUSA, further state that nonwovens can be produced in various ways and production can be conveniently divided into the three stages: web formation, bonding and finishing.

Additionally, the EN for heading 5603 states:

This heading also **excludes**:

(ij) Nonwovens for technical uses, of **heading 5911**.

HEADING 5911, HTSUSA

Heading 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Legal Note 7 to Chapter 59, HTSUSA. Legal Note 7 to Chapter 59 reads:

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:

(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

(ii) Bolting cloth;

(iii) Straining cloth of a kind used in oil presses or the like, of textile material or of human hair;

(iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;

(v) Textile fabric reinforced with metal, of a kind used for technical purposes;

(vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

Although the term “for technical uses” is not defined in the section or chapter notes, the ENs to heading 5911, HTSUSA, state that “textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.”

However, the ENs to heading 5911 do provide descriptions of various types of textile articles and products used for specific technical purposes. The EN to heading 5911, HTSUSA, describe “straining cloths” as:

(e.g., woven filter fabrics and needled filter fabrics), whether or not impregnated, of a kind used in oil presses or for similar filtering purposes (e.g., in sugar refineries or breweries) and for gas cleaning or similar technical applications in industrial dust collecting systems. The heading includes oil filtering cloth, certain thick heavy fabrics of wool or of other animal hair, and certain unbleached fabrics of synthetic fibres (e.g., nylon) thinner than the foregoing but of a close weave and having a characteristic rigidity. It also includes similar straining cloth of human hair.

The language in the tariff schedule qualifies the types of straining cloths classifiable in this subheading as those “of a kind used in oil presses or the like.” However, a careful reading of the language used in subheading 5911.40, HTSUSA, reveals that there is no requirement that the straining cloths in this provision be used in oil presses. The term “or the like” indicates that the drafters of the tariff schedule have included in their definition of “straining cloth” a much broader range of articles than those that are merely used in oil presses. The ENs to heading 5911, HTSUSA, specifically refer to filter fabrics used for filtering purposes including gas cleaning and dust collecting. The subject merchandise is therefore covered by the ENs to heading 5911, HTSUSA. See, *GKD-USA, Inc. v. United States*, 20 C.I.T. 749; 931 F. Supp. 875 (1996, Ct. Intl. Trade) in which the issue was whether polyester filter belting imported in material lengths was precluded from classification under heading 5911 merely because it was not used in oil presses. The Court determined that “straining cloth” is generally referred to as “filter cloth”, and that the term “straining cloth” was intended to have a broad meaning and could apply to any fabric used as a medium for filtration. The Court held that the imported polyester filter belting was properly classifiable in subheading 5911.40, HTSUS.

Based on the established precedent provided by the Court of International Trade and prior CBP rulings, as well as the ENs, it appears that nonwoven material used in blood filtration is a straining cloth under the EN to heading 5911.

You contend that the polyester fabric at issue here cannot be classified in heading 5911 because, in its imported condition, it is incapable of technical use and is not one of the materials provided for in Note 7 to Chapter 59. You further assert that in its imported condition, the imported product would disintegrate under the pressure of most aqueous solutions passing through it and is therefore unsuitable for use as a straining cloth. After importation, the product undergoes a “grafting” process which is claimed to create an entirely new product with a different chemical structure which is suitable for straining. Thus you assert that in the condition as imported the material is not a textile product for technical uses.

We must therefore determine whether the product in question is, in effect, an unfinished filter or straining cloth in its condition as imported and is,

therefore, classifiable as such under the tenets of GRI 2(a). That rule reads in part that “any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.” In this case, samples of the merchandise in its condition as imported prior to treatment (ungrafted) and after importation and treatment (grafting) have been analyzed by the CBP Lab. When tested for water penetration, no water filtered through (drained) the ungrafted sample, while the grafted sample had complete filtration of water. Without the further processing (grafting) done after importation, the material does not have the essential character of the “complete or finished article”—that is, the ability to strain. It therefore does not have the essential character of a straining cloth under Note 7 to Chapter 59. Since the merchandise before us is a not straining cloth, nor unfinished straining cloth, it is not a textile product for technical use within the meaning of heading 5911. Therefore, it is not classifiable in heading 5911, and falls within heading 5603. See, *Filmtec Corporation v. United States*, slip op 03–153 (United States Court of International Trade, decided November 25, 2003) in which a nonwoven textile fabric sheet was imported in rolls. After importation the fabric is coated to produce a membrane which will be used as a filter medium. Both parties agreed that in its imported condition the fabric could not function as a filter medium. The Court held that because the fabric does not have the essential character of the finished article—the ability to strain salt from water, it could not fall within heading 5911, HTSUS.

Accordingly, we agree that the merchandise in its imported condition is classifiable under heading 5603 under a GRI 1 analysis.

As we stated above, the material imported prior to treatment is composed of a layer of transparent looking nonwoven polyester which appears to be of filament fiber and a layer of white fine polyester microfibers which are staple fibers. GRI 2(b) mandates that classification of goods consisting of more than one material shall be determined according to the principles of GRI 3. GRI 3(a) states that the heading which provides the most specific description is to be preferred to a heading which provides a more general description. However, when two headings each refer to only a part of the materials in a composite good, those headings are to be regarded as equally specific. EN V to Rule 3(a).

GRI 3(b) provides that composite goods consisting of different materials are to be classified as if they consisted of the material which gives them their “essential character.” Thus, the question is whether the fine polyester microfibers or the nonwoven filament polyester give the nonwoven its essential character. Essential character may be determined by the nature of the material, its bulk, quantity, weight, value or by the role of a material in relation to the use of the goods. EN VII to Rule 3(b). The fine polyester microfiber layer is thicker than the filament polyester layer. In addition, the nonwoven filament polyester layer is removed and discarded prior to use. Accordingly, it is the fine polyester microfibers, which are staple fibers, which gives the nonwoven material its essential character. We find that the sample as imported is classified under either subheading 5603.92, HTSUS, or subheading 5603.93, HTSUS, depending on its weight, as other, nonwovens, whether or not impregnated, coated, covered, or laminated.

HOLDING:

Depending on its weight, the merchandise described above is classifiable under subheading 5603.92.0090, HTSUSA, which provides for "Nonwovens, whether or not Impregnated, coated, covered or laminated: Other: Weighing more than 25 g/m² but not more than 70 g/m²: Other." If over 70 g/m², but not more than 150g/m², it is classifiable under subheading 5603.93.0090, HTSUSA, which provides for "Nonwovens, whether or not impregnated, coated, covered or laminated: Other: Weighing more than 70 g/m² but not more than 150 g/m²: Other." The general column one duty rate is free. The applicable textile category is 223 for goods classified in either subheading.

HQ 964255 is hereby revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.